

ORIGINAL

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BOB BURNS - Chairman
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SANDRA D. KENNEDY
JUSTIN OLSON



ARIZONA CORPORATION COMMISSION

February 27, 2019

Arizona Corporation Commission

DOCKETED

FEB 27 2019

DOCKETED BY

E-01345A-19-0043

Docket Control
Arizona Corporation Commission
1200 W Washington St.
Phoenix, AZ 85007

Re: In the Matter of the Commission's Investigation into the Political Spending of Arizona Public Service Company and Its Affiliates, Including Pinnacle West Capital Corporation

Dear Commissioners, Interested Parties, and Stakeholders,

Transparency and disclosure are essential to the accountability of public service corporations, the Commissioners, and the Commission as a whole. We are opening this docket to request records from Arizona Public Services Company and its affiliates that pertain to Commission elections and Commission-related charitable donations.

This is a necessary step to assure all ratepayers, public service corporations, stakeholders, interested parties, and the public that the Commission operates with integrity. Indeed, "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 371 (2010).

Today, we are writing to give Arizona Public Service Company the opportunity to voluntarily produce the material requested in the attached Subpoena Duces Tecum. This letter is in keeping with the Commission's normal process of requesting information from a public service corporation prior to compelling the utility through a subpoena.

The Subpoena Duces Tecum is well within the bounds of the Commission's jurisdiction. The scope is narrowly tailored to accomplish the goal of Commission transparency and does not unduly burden Arizona Public Service Company or its affiliates. This new docket is wholly separate from any other matter before the Commission and avoids previous relevancy concerns.

We request that APS provide all responsive material no later than March 31, 2019. If the company fails to comply by that deadline, we ask that this matter be placed on an upcoming staff meeting to consider and possibly vote on the attached Subpoena Duces Tecum.

Sincerely,

Commissioner Boyd Dunn

Chairman Robert "Bob" Burns

On this 27th day of February, 2019, the foregoing document was filed with Docket Control as a Correspondence From Commissioner, and copies of the foregoing were mailed on behalf of Boyd Dunn, Commissioner - A.C.C. & Bob Burns, Chairman – A.C.C. to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

Robin Mitchell

ARIZONA CORPORATION COMMISSION

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Elijah Abinah

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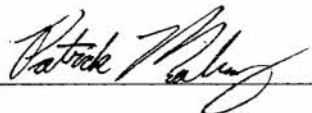
utildivservicebyemail@azcc.gov

Thomas Mumaw

Pinnacle West Capitol Corporation

PO Box 53999, M.S. 8695

Phoenix AZ 85072

By: _____

Patrick Maloney

Deputy Policy Advisor

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB BURNS – Chairman
ANDY TOBIN
BOYD W. DUNN
SANDRA D. KENNEDY
JUSTIN OLSON

IN THE MATTER OF THE COMMISSION'S
INVESTIGATION INTO THE POLITICAL
SPENDING OF ARIZONA PUBLIC SERVICE
COMPANY AND ITS AFFILIATES,
INCLUDING PINNACLE WEST CAPITAL
CORPORATION

DOCKET NO.

ADMINISTRATIVE SUBPOENA

TO: **Custodian of Records**
Arizona Public Service Company
400 North 5th Street
Phoenix, Arizona 85004

YOU ARE HEREBY COMMANDED, pursuant to Arizona Constitution Article 15 § 4, A.R.S. §§ 40-241, 40-244, A.A.C. R14-2-801 *et seq.*, A.A.C. R14-3-109, and Ariz. R. Civ. P. 30 and 45, to produce and permit inspection, copying, testing or sampling for the following designated documents, electronically stored information or tangible things, or to permit the inspection of premises. See Exhibit "A."

Place of Production or Inspection:

Arizona Corporation Commission
ATTN: Robin Mitchell, General Counsel
1200 W. Washington Street
Phoenix, Arizona 85007

Date and Time of Production:

February 27, 2019 at 2:00PM

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Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Kaci Cannon, Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail kcannon@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

Your Duties in Responding To This Administrative Subpoena

I. Exhaustion of Administrative Remedies: The doctrine of administrative remedies applies when a statute or rule establishes an administrative review procedure and determines when judicial review is available. The following provisions govern the procedure for responding and objecting to Commission administrative subpoenas and must be followed prior to seeking any available judicial remedies under Ariz. R. Civ. P. Rule 45.

Generally – the Commission’s Power to Inspect and Investigate. Pursuant to Ariz. Const. art. XV, § 4, the corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several members thereof, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the state. Said commission shall have power to take testimony under commission or deposition either within or without the state. Furthermore, pursuant to A.R.S. § 40-244(A), “[e]ach commissioner may administer oaths and certify to all official acts. The commission, or a commissioner, or any party, may take depositions as in a court of record.”

Commission Subpoenas. Pursuant to A.A.C. R14-3-109(O), subpoenas requiring the attendance of a witness from any place in the state of Arizona to any designated place of hearing for the purpose of taking testimony of such witnesses orally before the Commission may be issued upon application in writing. A subpoena may also command the person to whom it is directed to produce books, papers, documents or tangible things designated therein. The application for such subpoenas must specify, as clearly as possible, the books, waybills, papers, accounts or other documents desired.

Service. If service of subpoena is made by an officer of the state or his deputy, such service shall be evidenced by his return thereon. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service the original subpoena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be left with him. The original subpoena, bearing or accompanied by the required return, shall be returned forthwith to the Commission. A.A.C. R14-3-109(O).

Objections: Per A.A.C. R14-3-109(O), the Commission or presiding officer, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance therewith may:

- 1) Quash the subpoena if it is unreasonable or oppressive, or
- 2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued, of the reasonable cost of producing the books, waybills, papers, accounts or other documents desired.

Fees. Witnesses who are summoned are entitled to the same fees as are paid for like service in the courts of the state of Arizona, such fees to be paid by the party at whose instance the witness is subpoenaed. A.A.C. R14-3-109(O). Pursuant to A.R.S. § 40-244(B), each witness who appears by order of the commission or a commissioner shall receive for his attendance the same fees allowed by law to a witness in civil actions, which shall be paid by the party at whose request the witness is subpoenaed. The fees of a witness subpoenaed by the commission shall be paid from the fund appropriated for the use of the commission as other expenses of the commission are paid. Any witness subpoenaed, except one subpoenaed by the commission, may, at the time of service, demand his mileage and one days attendance, and if not paid need not attend. A witness furnished free transportation shall not receive mileage.

Depositions. The Commission, a Commissioner, or any party to any proceeding before it may cause the depositions of witnesses to be taken in the manner prescribed by law and of the civil procedure for the Superior Court of the state of Arizona. A.A.C. R14-3-109(P).

* * *

Your Duties in Responding To a Civil Subpoena

II. Judicial Remedies Available Under Ariz. R. Civ. P. 45: Following the exhaustion of any and all administrative remedies governing administrative subpoenas issued by the Commission and barring any conflicting provisions in the statutes and rules governing administrative subpoenas issued by the Commission, the following provisions govern a respondent's procedure for responding and objecting to a subpoena, pursuant to Rule 45 of the Arizona Rules of Civil Procedure.

Attendance at a Trial. If this subpoena commands you to appear at a trial, you must appear at the place, date and time designated in the subpoena unless you file a timely motion with the court and the court quashes or modifies the subpoena. *See* Rule 45(b)(5) and Rule 45(e)(2) of the Arizona Rules of Civil Procedure. *See also* “Your Right To Object To This Subpoena” section below. Unless a court orders otherwise, you are required to travel to any part of the state to attend and give testimony at a trial. *See* Rule 45(b)(3)(A) of the Arizona Rules of Civil Procedure.

Attendance at a Hearing or Deposition. If this subpoena commands you to appear at a hearing or deposition, you must appear at the place, date and time designated in this subpoena unless either: (1) you file a timely motion with the court and the court quashes or modifies the subpoena; or (2) you are not a party or a party's officer and this subpoena commands you to travel to a place other than: (a) the county where you reside or you transact business in person; or (b) the county where you were served with the subpoena or within forty (40) miles from the place of service; or (c) such other convenient place fixed by a court order. *See* Rule 45(b)(3)(B) and Rule 45(e)(2)(A)(ii) of the Arizona Rules of Civil Procedure. *See also* "Your Right To Object To This Subpoena" section below.

Production of Documentary Evidence. If this subpoena commands you to produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date, and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena. You may object to the production of electronically stored information from sources that you identify as not reasonably accessible because of undue burden or expense, including sources that are unduly burdensome or expensive to access because of the past good-faith operation of an electronic information system or good-faith and consistent application of a document retention policy. *See* Rule 45(c)(2)(D) of the Arizona Rules of Civil Procedure. Other grounds for objection are described in the “Your Right To Object To This Subpoena” section below. If this subpoena does not specify a form for producing electronically stored information, you may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person, but you need not produce the same electronically stored information in more than one form. *See* Rule 45(c)(2)(B) and (C) of the Arizona Rules of Civil Procedure.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena. *See* Rule 45(c)(4) of the Arizona Rules of Civil Procedure.

Inspection of Premises. If the subpoena commands you to make certain premises available for inspection, you must make the designated premises available for inspection on the date and time designated in this subpoena unless you provide a good faith written objection to the party or attorney

1 who served the subpoena. *See* Rule 45(c)(6) of the Arizona Rules of Civil Procedure. *See also* “Your
2 Right to Object to This Subpoena” section below.

3 ***Combined Subpoena.*** You should note that a command to produce certain designated
4 materials, or to permit the inspection of premises, *may* be combined with a command to appear at a
5 trial, hearing, or deposition. *See* Rule 45(b)(2) of the Arizona Rules of Civil Procedure. You do not,
6 however, need to appear in person at the place of production or inspection unless the
7 subpoena *also* states that you must appear for and give testimony at a hearing, trial or
8 deposition. *See* Rule 45(c)(3) of the Arizona Rules of Civil Procedure.

9 **Your Right To Object To This Subpoena**

10 ***Generally.*** If you have concerns or questions about this subpoena, you should first contact the
11 party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to
12 take reasonable steps to avoid imposing an undue burden or expense on you. The superior court
13 enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this
14 duty is breached. *See* Rule 45(e)(1) of the Arizona Rules of Civil Procedure. Unless otherwise ordered
15 by the court for good cause, the party seeking discovery from you must pay your reasonable expenses
16 incurred in responding to a subpoena seeking the production of documents, electronically stored
17 information, tangible things, or an inspection of premises. If you seek payment of expenses other than
18 routine clerical and per-page copying costs as allowed by A.R.S. § 12-351, you must object on the
19 grounds of undue burden to producing the materials without the subpoenaing party's payment, and send
20 an advance estimate of those expenses to the subpoenaing party, before the time specified for
21 compliance or within 14 days after the subpoena is served, whichever is earlier. You need not comply
22 with those parts of the subpoena that are the subject of the objection, unless the court orders you to do
23 so. The court may enter an order conditioning your response to the subpoena on payment of your
24 additional expenses, including ordering payment of those expenses in advance. *See* Rule 45(e)(1)(B).

Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition. If you wish to object to a subpoena commanding your appearance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena with the court to obtain a court order excusing you from complying with this subpoena. *See* Rules 45(b)(5) and 45(e)(2) of the Arizona Rules of Civil Procedure. The motion must be filed in the superior court of the county in which the case is pending or in the superior court of the county from which the subpoena was issued. *See* Rule 45(e)(2)(A) and (B) of the Arizona Rules of Civil Procedure. The motion must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. *See* Rule 45(e)(2)(D) of the Arizona Rules of Civil Procedure. You must send a copy of any motion to quash or modify the subpoena to the party or attorney who served the subpoena. *See* Rule 45(e)(2)(E) of the Arizona Rules of Civil Procedure. Even if you file such a motion, you must still attend and testify at the date, time, and place specified in the subpoena, unless excused from doing so--by the party or attorney serving the subpoena or by a court order--before the date and time specified for your appearance. *See* Rule 45(b)(5) of the Arizona Rules of Civil Procedure.

The court *must* quash or modify a subpoena:

(1) if the subpoena does not provide a reasonable time for compliance;

(2) unless the subpoena commands your attendance at a trial, if you are not a party or a party's officer and if the subpoena commands you to travel to a place other than: (a) the county where you reside or transact business in person; (b) the county where you were served with a subpoena, or within forty (40) miles from the place of service; or (c) such other convenient place fixed by a court order; or

(3) if the subpoena requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(4) if the subpoena subjects you to undue burden.

See Rule 45(e)(2)(A) of the Arizona Rules of Civil Procedure.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Kaci Cannon, Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail kcannon@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

1 The court *may* quash or modify a subpoena:

2 (1) if the subpoena requires you to disclose a trade secret or other confidential research,
3 development or commercial information;

4 (2) if you are an unretained expert and the subpoena requires you to disclose your opinion or
5 information resulting from your study that you have not been requested by any party to give on matters
6 that are specific to the dispute;

7 (3) if you are not a party or a party's officer and the subpoena would require you to incur
8 substantial travel expense; or

9 (4) if the court determines that justice requires the subpoena to be quashed or modified.

10 See Rule 45(e)(2)(B) of the Arizona Rules of Civil Procedure.

11 In these last four circumstances, a court may, instead of quashing or modifying a subpoena,
12 order your appearance or order the production of material under specified conditions if: (1) the serving
13 party or attorney shows a substantial need for the testimony or material that cannot be otherwise met
14 without undue hardship; and (2) if your travel expenses or the expenses resulting from the production
15 are at issue, the court ensures that you will be reasonably compensated. See Rule 45(e)(2)(C) of the
16 Arizona Rules of Civil Procedure.

17 ***Procedure for Objecting to Subpoena for Production of Documentary Evidence.*** If you wish
18 to object to a subpoena commanding you to produce documents, electronically stored information or
19 tangible items, or to permit the inspection of premises, you may send a good faith written objection to
20 the party or attorney serving the subpoena that objects to: (1) producing, inspecting, copying, testing,
21 or sampling any or all of the materials designated in the subpoena; (2) inspecting the premises; or (3)
22 producing electronically stored information in the form or forms requested or from sources that are not
23 reasonably accessible because of undue burden or expense, the good-faith routine operation of an
24 electronic information system, or the good-faith and consistent application of a document retention

1 policy. You also may object on the ground that the subpoena seeks the production of materials that that
2 have already been produced in the action or that are available from parties to the action. *See* Rule
3 45(e)(1)(A). If you seek payment of expenses other than routine clerical and per-page copying costs as
4 allowed by A.R.S. § 12-351, you must object on the grounds of undue burden to producing the materials
5 without the subpoenaing party's payment, and provide an advance estimate of those additional
6 expenses. You must send your written objection to the party or attorney who served the subpoena
7 before the time specified for compliance or within 14 days after the subpoena is served, whichever is
8 earlier. *See* Rule 45(c)(6)(A)(i) and (ii) of the Arizona Rules of Civil Procedure.

9 If you object because you claim the information requested is privileged, protected, or subject to
10 protection as trial preparation material, you must express the objection clearly, and identify in writing
11 the information, document, or electronically stored information withheld and describe the nature of that
12 information, document, or electronically stored information in a manner that--without revealing
13 information that is itself privileged or protected--will enable the demanding party to assess the
14 claim. *See* Rules 26(b)(6)(A) and 45(c)(5)(A) of the Arizona Rules of Civil Procedure. You may object
15 to providing the information required by Rule 26(b)(6)(A) if providing the information would impose
16 an undue burden or expense.

17 If you object to the subpoena in writing, you do not need to comply with the subpoena until a
18 court orders you to do so. It will be up to the party or attorney serving the subpoena to first personally
19 consult with you and engage in good faith efforts to resolve your objection and, if the objection cannot
20 be resolved, to seek an order from the court to compel you to provide the documents or inspection
21 requested, after providing notice to you. *See* Rule 45(c)(6)(B) and (C) of the Arizona Rules of Civil
22 Procedure.

1 If you are not a party to the litigation, or a party's officer, the court will issue an order to protect
2 you from any significant expense resulting from the inspection and copying commanded. *See* Rule
3 45(c)(6)(B) of the Arizona Rules of Civil Procedure.

4 Instead of sending a written objection to the party or attorney who served the subpoena, you
5 also have the option of raising your objections in a motion to quash or modify the subpoena, or through
6 a motion for protective order. *See* Rule 45(c)(6)(B) and (e)(2) of the Arizona Rules for Civil Procedure.
7 The procedure and grounds for doing so are described in the section above entitled "Procedure for
8 Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition."

9 If the subpoena *also* commands your attendance at a hearing, trial or deposition, sending a
10 written objection to the party or attorney who served the subpoena does not suspend or modify your
11 obligation to attend and give testimony at the date, time and place specified in the subpoena. *See* Rule
12 45(c)(6)(A)(iii) of the Arizona Rules of Civil Procedure. If you wish to object to the portion of this
13 subpoena requiring your attendance at a hearing, trial or deposition, you must file a motion to quash or
14 modify the subpoena as described in the section above entitled "Procedure for Objecting to a Subpoena
15 for Attendance at a Hearing, Trial or Deposition." *See* Rule 45(b)(5) and 45(c)(6)(A)(iii) of the Arizona
16 Rules of Civil Procedure. Even if you file such a motion, you must still attend and testify at the date,
17 time, and place specified in the subpoena, unless excused from doing so--by the party or attorney
18 serving the subpoena or by a court order--before the date and time specified for your
19 appearance. *See* Rule 45(b)(5) of the Arizona Rules of Civil Procedure.

20 **DISOBEDIENCE OF THIS SUBPOENA** constitutes contempt of the Arizona Corporation
21 Commission and may subject you to further proceedings and penalties under law, pursuant to
22 A.R.S. § 40-424.
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2 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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4 CHAIRMAN BURNS

COMMISSIONER DUNN

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6 COMMISSIONER TOBIN

COMMISSIONER KENNEDY

COMMISSIONER OLSON

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8 IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,
9 Executive Director of the Arizona Corporation Commission,
10 have hereunto, set my hand and caused the official seal of this
11 Commission to be affixed at the Capitol, in the City of Phoenix,
12 this _____ day of _____, 2019.

13 _____
14 MATTHEW J. NEUBERT
15 EXECUTIVE DIRECTOR

16 DISSENT: _____

17 DISSENT: _____
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Exhibit "A" to Subpoena Duces Tecum¹

From January 1, 2011, to present, produce all documents, records books, and any other papers, whether stored on electronic media or otherwise, responsive to the following categories:

1. Any and all documents, correspondence, including but not limited to emails, records, notes, memoranda, electronically stored information, or tangible things in the custody or control of Arizona Public Service Company, its employees, directors, agents, designees, parent companies, holding companies, subsidiaries, associates, and/or affiliates, including Pinnacle West Capital Corporation, relating to any contribution, expenditure, or other attempt to influence the outcome or result of an Arizona Corporation Commission election.²
2. Any and all written correspondence, including but not limited to e-mails, letters, facsimile, text messages, and voice transcriptions, between the following: (1) an Arizona Corporation Commissioner; and (2) Arizona Public Service Company, its employees, directors, agents, designees, parent companies, holding companies, subsidiaries, associates, and/or affiliates, including Pinnacle West Capital Corporation, that relate to any and all solicitations for, or contributions to a 26 U.S.C. § 501(c)(3) organization that occurred during the above mentioned Arizona Corporation Commissioner's term on the Commission.³

¹ For the purposes Exhibit A, the terms "affiliate," "entity," "holding company," and "subsidiary" have the same meaning as such terms under A.A.C. R14-2-801 *et seq.*

² For the purposes of Request 1, the terms "contribution" and "expenditure" have the same meaning as such terms have under A.R.S. § 16-901 *et seq.* In addition, the term "influence" shall mean supporting or opposing a candidate for nomination or election to public office or the recall of a public officer and supporting or opposing the circulation of a petition for the recall of a public officer in any manner that is not impartial or neutral. *See e.g.* A.R.S. §§ 16-192(H)(2) & 16-901 *et seq.*

³ For the purposes of Request 2, the term contribution has the same meaning as such term has under United States Internal Revenue Publication 526.